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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,528	02/22/2002	Jessica E. Lemay	460.2126USU	1045

7590 11/02/2004  
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EXAMINER

CHAPMAN, GINGER T

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/081,528

Applicant(s)

LEMAY ET AL.

Examiner

Ginger T Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-116 is/are pending in the application.
- 4a) Of the above claim(s) 31-54, 70-85 and 96-116 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-30, 55-69 and 86-95 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4 and 5.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,524,269 issued to McNamara.

3. As depicted in figures 3, 6 and 7A, McNamara discloses a multi-component tampon applicator which includes three separately formed components: a plunger (58), a barrel (54) having a forward and a rearward end, and an insertion tip (74) having a leading surface of discrete petals (78) with grooves (40) between the adjoining petals.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNamara as applied to claim 1 above and further in view of the teachings of U.S. Patent No. 6,056,714 issued to McNelis et al.

McNamara discloses a multi-component tampon applicator assembled from separately formed components, but fails to teach the material from which all components are made. Cardboard and plastic are materials well known in the tampon art for their safety and availability. McNelis et al disclose that the material compositions of the barrel and plunger may vary from each other (col. 6, lines 31-32), and further, the most common materials in the art include plain or coated paper or cardboard or plastic; wherein the coatings that may be used on the paper or cardboard include wax, plastic and cellulose (col. 6, lines 33-38). In particular, McNelis et al teach an applicator including a plunger (60) and barrel (40) having a rounded insertion end (22) that could either be made from paper, cardboard and plastic. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the applicator components of McNamara from the paper, cardboard and plastic materials as taught by McNelis to produce safe and convenient tampons for the comfort of the user.

### *Response to Arguments*

Applicant's arguments filed July 23, 2004 have been fully considered but they are not persuasive. Applicant submits that McNamara (6,524,269) fails to disclose or suggest a multiple component tampon applicator with at least three separate components selected from the group consisting of a barrel, a fingergrasp, a plunger, and an insertion tip comprising petals. Applicant acknowledges that McNamara distinguishes petals from prestressed failure grooves. As seen clearly in figs. 2-7, McNamara refers to the grooves (fig. 2A (40, 44), col. 6, lines 21-23) and the adjoining petals (fig. 7A (78), col. 7, line 18) which collectively form the forward surface of the hemispherical front of the device and thus define the insertion tip (col. 3, lines 21-27).

6. Applicant submits that the disclosure of petals in McNamara is specific to the petals of the plastic frame (70) of the applicator, however, as seen in fig. 6, the frame portion (70) comprises the insertion tip through which the pledget is deployed and are being read as petals. As best depicted in fig. 4, as the tampon is deployed from the insertion tip the petals open by separating along the prestressed failure grooves.

7. McNamara discloses a multi-component tampon applicator made of three separately formed components: insertion tip, plunger, and barrel with a forward and rearward end, and the barrel comprising eight petals adjoined by grooves on the forward end. McNamara contains all of the elements of claims 1 and 7. Claims 2-6 which depend from claim 1 are not patentably distinguishable over McNamara in view of the teachings of McNelis et al. (6,056,714). McNelis teaches a tampon applicator with a plunger and barrel that could be made from either plain or coated paper and cardboard and plastic. The references taken in combination teach the multi-component applicator of McNamara with either a plunger or barrel that could be made of paper, cardboard or plastic as taught by McNelis. Examiner maintains that plastic and cardboard are well known in the tampon art for their safety and availability and ease of comfortable insertion by the user. It is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, therefore it would have been an obvious design choice for one of ordinary skill in the art at the time the invention was made to combine the multi-component applicator of McNamara with the materials taught by the McNelis applicator.

***Allowable Subject Matter***

1. Claims 9-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 18-30, 55-69 and 86-95 are allowed.

***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T Chapman whose telephone number is (703) 305-0471. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

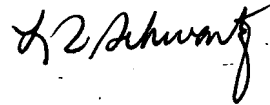
Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Ginger Chapman  
Examiner, Art Unit 3761



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700